SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 496.

INDEX.

	Original.	Print.
Certificate from the United States circuit court of appeals for the sixth circuit	1	1
Statement	1	1
Question certified	1	1
Judge's certificate	2	1
Clerk's certificate	3	1

12931—03

1 United States circuit court of appeals, sixth circuit.

MAGGIE A. BRADFORD
vs.
SOUTHERN RAILWAY CO.
} Writ of error to western district of Tennessee.

This was an action of tort. The plaintiff was a citizen of Tennessee and the defendant a corporation organized under the laws of Virginia. The jurisdiction of the court below was wholly dependent upon diversity of citizenship. There was a jury and verdict against the plaintiff in error and a judgment accordingly.

The plaintiff in error sued out this writ of error and has lodged with the clerk of this court, within the time required by law, a full transcript of the record in the court below. The clerk refusing to docket same unless the plaintiff would deposit with him the sum of thirty-five dollars, as security for taxable costs as required by rule 16 of this court, the plaintiff has filed her petition, duly verified, praying to be allowed to prosecute her writ in forma pauperis, and that the clerk be required to docket said transcript and that the rule requiring a deposit to cover costs be dispensed with. The petition shows a state of facts which entitle the plaintiff to prosecute her writ of error as a poor person, provided the act of July 20, 1892, 27 Statutes at Large, 272, applies to appellate proceedings.

Because this court has doubts as to whether the act of Congress above mentioned applies to appellate proceedings, it is ordered that the foregoing statement be certified to the Supreme Court and the instruction of that court be requested for the proper decision of the following questions which arise upon the petition and motion of the plaintiff in error.

1. Does the act of July 20, 1892, 27 Statutes at Large, 272, providing when a plaintiff may sue as a poor person, apply to the prosecution of a writ of error from this court?

2 2. If that act of Congress does not apply to appelate proceedings, has this court any authority to permit the prosecution of a writ of error in forma pauperis?

HORACE H. LURTON,
HENRY F. SEVERENS,
J. K. RICHARDS,
Judges of the United States Circuit Court of Appeals for the Sixth Circuit.

JUNE 5, 1903.

3 United States circuit court of appeals for the sixth circuit.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss.:

I, Frank O. Loveland, clerk of the United States circuit court of appeals for the sixth circuit, do hereby certify that the foregoing certificate and statement of facts in the case of Maggie A. Bradford *vs.* Southern Ry. Co., was duly filed and entered of record in my office by order of said court, and as directed by said court the said certificate is by me

forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at the city of Cincinnati, Ohio, this 6th day of June, A. D., 1903.

[SEAL.]

FRANK O. LOVELAND,
Clerk of United States Circuit Court of Appeals for the Sixth Circuit.

(Indorsed:) United States circuit court of appeals for the sixth circuit. Maggie A. Bradford *vs.* Southern Railway Company. Questions certified to the Supreme Court of the United States. Received office of the clerk Supreme Court U. S., Jun. 8, 1903.

(Indorsement on cover:) File No. 19147. U. S. circuit court of appeals, sixth circuit. Term No. 496. Maggie A. Bradford *vs.* Southern Railway Company. (Certificate.) Filed December 1, 1903. File No. 19147.

()

FILE COPY.

Office Supreme Ct.
FILED
JUN 17
JAMES H. McKEN

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904.

No. ~~405~~. 151

MAGGIE A. BRADFORD
vs.
SOUTHERN RAILWAY COMPANY

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

JAMES GALLAGHER,
FREDERIC D. McKENNEY,
Attorneys for Maggie A. Bradford.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1903.

No. 496.

MAGGIE A. BRADFORD
VS.
SOUTHERN RAILWAY COMPANY.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

This suit was commenced in the Circuit Court of Shelby County, Tennessee, by plaintiff in error against defendant in error to recover ten thousand dollars as damages for the negligent killing of her husband.

The statutes of Tennessee give the widow a right of action in such cases for the loss of the husband, to be prosecuted in her own name, and for her own benefit, and authorize the prosecution of the suit in *forma pauperis*.

The case was removed by defendant in error to the Circuit Court of the United States at the city of Memphis, upon the ground of the non-residence of defendant in Tennessee.

After pleas filed in the latter court a trial was had,

resulting in a verdict and judgment in favor of defendant in error.

Upon examination of the record containing a bill of exceptions, the trial judge granted plaintiff in error a writ of error to the United States Circuit Court of Appeals for the Sixth Circuit, in *forma pauperis*.

Upon lodging the transcript of the record in the case with the clerk of the Circuit Court of Appeals, the clerk, in view of the case of Galloway v. Fort Worth Bank, reported in 186 U. S. S. Reports 177, declined to docket the case without a deposit of $35.00, or security being given for taxable costs.

Then plaintiff in error presented her sworn petition, accompanied with a transcript of the record in the case, to the Circuit Court of Appeals for said circuit, praying that the clerk be directed to docket the case and that she be allowed to proceed with the case in *forma pauperis*.

The Court of Appeals being in doubt, has certified a statement to this Honorable Court for instructions upon the following matters:

First. As to the authority of the Circuit Court of Appeals to allow the case to proceed in *forma pauperis*, under the act of congress of July 20, 1892, 27 Statutes at Large 272.

Second. As to the authority of the court to allow the case to proceed in *forma pauperis*, independent of statute, in meritorious cases.

ARGUMENT.

The Circuit Court of Appeals, before the Galloway case was called to its attention, assumed, by Rule 16, to allow the prosecution of appellate proceedings in meritorious cases in *forma pauperis;* but, in view of the Galloway case, the court has expressed doubts of its authority to allow appellate proceedings to the prosecuted in *forma pauperis.*

It is respectfully submitted for plaintiff in error that inasmuch as the case at bar was removed to the Circuit Court, it is to be considered, for all purposes, as having originated in said court, thus distingushing it from the Galloway case, which arose in a State court. The former case is within the equity of the act of congress.

Fuller v. Montague, 53 Federal Reporter 206.

The only case to the contrary is The Presto, 93 Federal Reporter 522.

The Tennessee statute which authorized the commencement of this case in *forma pauperis* in the State court is narrower in its terms and seemingly more restricted in scope than the act of congress upon the same subject, nevertheless it has been construed by the Supreme Court of that State to extend to the prosecution of appellate proceedings.

Philips v. Rudle, 1 Yerger R. 121.
Brinkley v. Hayworth, 3 Yerger 421.
Mosley v. Davenport, 6 Lea 80.
2 Heiskell 634.

It is respectfully submitted that, inasmuch as the trial judge granted the writ of error in *forma pauperis*, and the Circuit Court of Appeals has certified the statement and questions to this Honorable Court for instructions, a *prima facie* meritorious case is shown, at least within the equity of the act of congress, if not within its letter.

II.

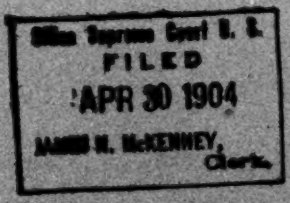
Independent of any statute, the Circuit Court of Appeals possesses inherent power to allow the prosecution of a writ of error in *forma pauperis* in any case wherein there might otherwise be a failure of justice.

Bland v. Lamb, 2 Jac. & W. 402, per Lord Elden, cited in 95 Federal Reporter 345.

It is respectfully submitted that if the act of congress of July 20, 1892, does not apply to appellate proceedings, it is nevertheless within the discretionary power of the Circuit Court of Appeals to allow plaintiff in error, for cause shown, to prosecute her writ of error in *forma pauperis*.

JAMES GALLAGHER,
FREDERIC D. McKENNEY,
Attorneys for Maggie A. Bradford.

FILE COPY.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 486 151.

MAGGIE A. BRADFORD

vs.

SOUTHERN RAILWAY CO.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

FRANK P. POSTON,
Attorney.

W. C. TOOF & CO., PPS. & LITHS. MEMPHIS

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 496

MAGGIE A. BRADFORD

vs.

SOUTHERN RAILWAY CO.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

The questions certified to this court by the Circuit Court of Appeals for the Sixth Circuit are as follows:

1. Does the Act of July 20, 1892, 27 Statutes at Large 272, providing when a plaintiff may sue as a poor person, apply to the prosecution of a writ of error from this court?

2. If that Act of Congress does not apply to appellate proceedings, has this court any authority to permit the prosecution of a writ of error, *in forma pauperis?*

We respectfully submit that both of these questions must be answered in the negative.

Section 11 of the Act of Congress approved March 3, 1891, 26 Statutes at Large 826, creating the Circuit Court of Appeals, and defining its jurisdiction, provides as follows:

"And all provisions of law now in force regulating the methods and system of review through appeals or writs of

error shall regulate the methods and system of appeals and writs of error provided for in this Act, and with respect to the Circuit Courts of Appeals, including all provisions for bonds, or other securities to be required and taken on such appeals and writs of error."

Section 1000 of the Revised Statutes is as follows:

"Every justice or judge signing a citation on any writ of error shall, except in cases brought up by the United States or by direction of any department of the government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fails to make his plea good, shall answer all damages and costs where the writ is a supersedeas, and stays execution or all costs only where it is not a supersedeas, as aforesaid."

Rule 16, adopted by the Circuit Court of Appeals for the Sixth Circuit, provides that the plaintiff in error must deposit with the clerk, before the case is docketed, the sum of thirty dollars as taxable costs. It is claimed by the plaintiff in error that the right to prosecute a writ of error from the Circuit Court of Appeals is given by Chapter 209 of the Acts of Congress, approved July 20, 1892, which is as follows:

"That any citizen of the United States entitled to commence any suit or action in any court of the United States may commence and prosecute to a conclusion any such suit or action without being required to prepay fees or costs or give security therefor before or after bringing suit or action, upon filing in said court a statement, under oath, in writing, that because of his poverty he is unable to pay the costs of said suit or action which he is about to commence, or to give security for the same, and that he believes he is entitled to the redress he seeks by such suit or action, and setting forth briefly the nature of his alleged cause of action."

An appeal or writ of error is a statutory proceeding, and is not a common law right. The mere fact that the

appellant is a pauper does not, of itself, relieve him of the necessity of giving an appeal bond, and the general rule is that express statutory authority must be had for an appeal *in forma pauperis*.

The Presto, 93 Fed. 523.
McLain v. Williams, 43 L. R. A. 287.
Sullivan v. Haug, 10 L. R. A. 263.
Bailey v. Kincaid, 57 Hun. 516.
Butler v. Jarvis, 117 N. Y. 115.
Halloran v. Railroad Co., 40 Texas 465.
Fite v. Black, 85 Ga. 413.

In Sage v. Central Railroad Company, 96 U. S. 714, it was held "That there is no form for the allowance of an appeal, but there can be no appeal without the taking of security for costs, or costs and damages, and this must be done by the court, or judge, or justice."

In Ex-parte Parks, 93 U. S. p. 21, this court held:

"The regulation of the appellate power of this court was conferred upon Congress, and Congress having given an appeal or writ of error only in certain specified cases, the implication is irresistible that those errors and irregularities which can be reviewed only by appeal or writ of error can not be reviewed in this court in any other cases than those in which those processes are given."

In Woods v. Davidson, 57 Mississippi 206, the Supreme Court of Mississippi held, under a statute of that State similar to the Act of Congress, that a litigant who has commenced a suit *in forma pauperis* in a justice's court, can not appeal without bond from an adverse decision, basing this ruling upon the proposition that the right to appeal is statutory, and not a common law one, and that he is deprived of no constitutional right, because he has had his day in court.

The fact of poverty, itself, does not relieve appellant from the necessity of giving bond, but there must be express statutory authority for an appeal *in forma pauperis*. This is shown by the fact that practically every State in the United States has enacted such a statute.

The Act of July 20, 1892, does not authorize an appeal to or a writ of error from the Circuit Court of Appeals after an adverse decision by a court of original jurisdiction without giving security for costs. That Act provides, "Any person entitled to commence an action may commence and prosecute to a conclusion, any such action." A conclusion is reached when an adverse decision is had in the court of original jurisdiction, and hence the purpose of the statute is met when a party has had a fair trial in that court, and has met with an adverse decision. If he desires to pursue the action to a higher court, it must be done either under a statutory authority allowing the pauper's oath to be taken, or else he must give security for the costs.

The act under examination simply authorizes the prosecution of this case in the lower court, and does not, except by implication, authorize an appeal on the pauper's oath to the Court of Appeals. The writ of error is, in legal effect, a new action, and to prosecute it under the pauper's oath express legislative authority must be had.

If the act under consideration had been intended by Congress to give the right of appeal *in forma pauperis*, how easy it would have been to insert the necessary language in the act, and thus give express authority, and remove all question of doubt, and unless Congress gave this right of appeal, as stated in Ex-parte Parks, *supra*, "the implication is irresistible that only such cases as are ex-

pressly provided for by law can be brought up *in forma pauperis*," and unless this process is authorized by law, no such right exists, and the right can not be extended by implication to cases other than those expressly provided for by the act in question.

In the case of The Presto, 93 Fed. 522, the United States Circuit Court of Appeals for the Fifth Circuit, held that the Act of July 20, 1892, did not give a party defeated in the court of original jurisdiction the right to a writ of error on a pauper's oath. At page 524 the court says:

"In our opinion the statute does not warrant the construction claimed, even if express statutory authority is not required to dispense with an appeal bond. We think that the object and purposes of the statute in question was to give a poor person, unable to advance costs, an opportunity to have his case inquired into by a responsible court, and we can not infer that it was the intention of Congress that, after the commencement and prosecution of the case through the court of original jurisdiction, the case could thereafter be carried through all the appellate courts without security for the costs and fees necessarily incurred."

In the case of Galloway v. Ft. Worth Bank, 186 U. S., p. 178, which involved an application for leave to prosecute a writ of error to a State court without giving security, as required by Section 1000 of the Revised Statutes, under the Act of Congress of July 20, 1892, this court held that that act had no application to proceedings in the Supreme Court. If the act in question has no application to proceedings in the Supreme Court of the United States, it is difficult to see how it has any application to proceedings in the Circuit Court of Appeals. Both are appellate courts simply, and the practice in the one is the same as it is in the other, and we can see no good reason why, if not applicable to proceedings in the Supreme

Court, the act in question should apply to the Courts of Appeals.

The plaintiff in this case has had the benefit of a day in court, has had a fair trial, and was denied a judgment. If she desires to prosecute the case further, she should be required to give a bond for the costs, unless she can show clear legislative authority for the granting of this writ of error on the pauper's oath.

As said by the Circuit Court of Appeals for the Fifth Circuit, in the case of The Presto, *supra*, "It would be a decided injustice to the adverse party to make him responsible for all costs in the court of original jurisdiction, and, thereafter, without the usual security, to give his opponent the right to carry him through the appellate courts."

It is a well known fact that the courts are at the present day crowded with damage suits of every imaginable description against railroads and other corporations. It is equally well known that more than 90 per cent of these cases are brought on the pauper's oath. Even if the defendant is successful in its defense of these cases, it is required, as a matter of law, to pay a proportion of the costs, that is, such costs as are incurred in its behalf.

It is not only a great injustice to the defendants in these cases, after successfully defending them, to have a part of the costs to pay, and to be dragged through the appellate courts, and additional costs imposed upon them, but it is equally a hardship upon the clerks and other officers of the court, who are compelled to perform their services without pay; and it is submitted, in view of these facts, that the right to a writ of error should not be granted in this case, unless the plaintiff can show clear and express legislative authority therefor.

II.

If the first question be answered in the negative, it follows, necessarily, that the second must be answered in the same way. As shown by the authorities above cited, the right of appeal, or the right to a writ of error, is statutory, and not a common law right, and if the appeal or writ of error is not authorized by statute, it does not exist at the common law.

FRANK P. POSTON,

W. A. HENDERSON,
Of Counsel.

Supreme Court of the United States.

No. 151.—October Term, 1904.

Maggie A. Bradford vs. Southern Railway Company. } On a certificate from the United States Circuit Court of Appeals for the Sixth Circuit.

[November 28, 1904.]

This case is brought here on the following certificate:

"This was an action of tort. The plaintiff was a citizen of Tennessee, and the defendant a corporation organized under the laws of Virginia. The jurisdiction of the court below was wholly dependent upon diversity of citizenship. There was a jury and verdict against the plaintiff in error and a judgment accordingly.

"The plaintiff in error sued out this writ of error, and has lodged with the clerk of this court, within the time required by law, a full transcript of the record in the court below. The clerk refusing to docket same unless the plaintiff would deposit with him the sum of thirty-five dollars, as security for taxable costs as required by rule 16 of this court, the plaintiff has filed her petition, duly verified, praying to be allowed to prosecute her writ *in forma pauperis*, and that the clerk be required to docket said transcript and that the rule requiring a deposit to cover costs be dispensed with. The petition shows a state of facts which entitle the plaintiff to prosecute her writ of error as a poor person, provided the act of July 20, 1892, 27 Statutes at Large, 252, applies to appellate proceedings.

"Because this court has doubts as to whether the act of Congress above mentioned applies to appellate proceedings, it is ordered that the foregoing statement be certified to the Supreme Court and the instruction of that court be requested for the proper decision of the following questions which arise upon the petition and motion of the plaintiff in error.

"1. Does the act of July 20, 1892, 27 Statutes at Large, 252, providing when a plaintiff may sue as a poor person, apply to the prosecution of a writ of error from this court?

"2. If that act of Congress does not apply to appellate proceedings, has this court any authority to permit the prosecution of a writ of error *in forma pauperis*?"

The act of July 20, 1892, above referred to, reads:

"An act providing when plaintiff may sue as a poor person and when counsel shall be assigned by the court.

"*Be it enacted by the Senate and House of Representatives in Congress assembled*, That any citizen of the United States, entitled to commence any suit or action in any court of the United States, may commence and prosecute to conclusion any such suit or action without being required to prepay fees or costs, or give security therefor before or after bringing suit

or action, upon filing in said court a statement under oath, in writing, that, because of his poverty, he is unable to pay the costs of said suit or action which he is about to commence, or to give security for the same, and that he believes he is entitled to the redress he seeks by such suit or action, and setting forth briefly the nature of his alleged cause of action.

"SEC. 2. That after any such suit or action shall have been brought, or that is now pending, the plaintiff may answer and avoid a demand for fees or security for costs by filing a like affidavit, and wilful false swearing in any affidavit provided for in this or the previous section, shall be punishable as perjury is in other cases.

"SEC. 3. That the officers of the court shall issue, serve all process, and perform all duties in such cases, and witnesses shall attend as in other cases, and the plaintiff shall have the same remedies as are provided by law in other cases.

"SEC. 4. That the court may request any attorney of the court to represent such poor person, if it deems the cause worthy of a trial, and may dismiss any such cause so brought under this act if it be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious.

"SEC. 5. That judgment may be rendered for costs at the conclusion of the suit as in other cases: *Provided*, That the United States shall not be liable for any of the costs thus incurred."

Mr. Chief Justice FULLER delivered the opinion of the Court:

After the passage of the act of July 20, 1892, many applications were made to this court for leave to prosecute writs of error or appeals *in forma pauperis*, and were uniformly denied, as we were of opinion that the act had no relation to proceedings in this court. And we so stated in *Gallaway* v. *Fort Worth Bank*, 186 U. S. 177, where leave was asked to prosecute a writ of error to a State court without giving security as required by section 1000 of the Revised Statutes. The ruling would have been the same if the review of the judgment or decree of a court of the United States had been sought because in our view the statute refers only to the court of original jurisdiction. And the same ruling must necessarily obtain in the Circuit Courts of Appeals.

The act consists of five sections. Of these, sections three and four obviously relate to the trial or hearing. By section 5 "judgment may be rendered for costs at the conclusion of the suit as in other cases," which we take to mean judgment at the close of the trial or hearing, and not judgment then and also judgment in appellate proceedings, or in case of such proceedings no judgment for costs below until judgment rendered above.

The first section relates to the commencement and carrying forward of a suit or action without plaintiff being required to prepay fees or costs or to give security therefor, whether the fees or costs accrue at the beginning or during the progress of the suit or action. The application is to be

made at the outset, and the order, if granted, covers the fees or costs, accruing when or after the suit or action is commenced. And this result is secured by the words "and its prosecution to conclusion." That conclusion is the termination of the suit or action in the court where it is commenced. The second section provides for a similar application after the suit or action has been brought.

The words "suit or action" are used in both sections, and the applicant is required to set forth "his alleged cause of action," and by section 4 the case may be dismissed "if it be made to appear that the allegation of poverty is untrue, or if said court be satisfied that the alleged cause of action is frivolous or malicious."

Lord Coke defined "action" to be "a legal demand of one's right," and cause of action comprises every fact a plaintiff is obliged to prove in order to obtain judgment, or, conversely, every fact the defendant would have the right to traverse, *Railway Company.* v *Dixon*, 179 U. S. 131, 139. The words "action" and "cause of action" are not ordinarily applicable to writs of error, and, in our opinion, were obviously not so applicable here, but used *diverso intuitu.* And this is so whether a writ of error be considered a new proceeding or a continuation of the original proceeding as it is usually regarded in the Federal courts. *Cohens* v. *Virginia*, 6 Wheat. 410; *Nations* v. *Johnson*, 24 How. 205; *In re Chetwood*, 165 U. S. 443, 461.

A leading case on the subject is *Moore* v. *Cooley*, 2 Hill, 412. The statute of New York under consideration in that case was as follows (2 Rev. Stat. N. Y. 2d ed. 1836, p. 362):

"Every poor person, not being of ability to sue, who shall have a cause of action against any other, may petition the court in which such action is depending, or in which it is intended to be brought, for leave to prosecute as a poor person, and to have counsel and attorneys assigned to conduct his suit."

After quoting the statute Judge Cowen said:

"Strictly speaking, an error on which a writ lies is not a cause of action; for, as Lord Coke says, there is a distinction between writs and actions; and under this distinction he instances actions and writs of error. (2 *Inst.* 39, 40.) And yet, a release of all actions extends to writs of error, when anything may be recovered or taken by way of restitution under or in consequence of the writ of error. (*Co. Litt.* 288, *b. Bac. Abr. Release*, [I] 2.) This, however, I take it, proceeds rather upon an equitable, and therefore extended construction of the words in the release beyond their strict meaning; for they generally reach the original matter out of which the error arose, that being the direct subject of an action if the matter be thrown open by the writ of error. The original matter being released therefore, the words are very properly construed as reaching indirectly and in liberal construction to the writ of error itself, because that depends upon the original matter. Yet, in strictness, no book holds the word *action*, or words *cause of action*, to be identical with a writ of error or cause of a writ of error.

"There can be little doubt that the statute under which this motion is made, should be construed strictly; for the pauper comes to litigate entirely at the expense of others. He is neither to pay his own attorneys or counsel, nor is he liable to his adversary should the suit prove to be groundless. He thus enjoys a great privilege and exemption from the common lot of men, whereby, in respect to causes of action proper, he becomes, as Lord Bacon says, rather able to vex than unable to sue. (Hist of Hen. 7.)"

Lord Bacon was referring to the statute 11 Hen. VII, c. 12, and his language is elsewhere translated or explained to mean "that the charity of the legislature thought it better that the poor man should be able to vex than that he should not be able to sue." 6 Bacon's Works, 161.

So in *Bristol* v. *United States*, 129 Fed. Rep. 87, where the Circuit Court of Appeals for the Seventh Circuit held that the act of Congress of July 20, 1892, did not entitle a defendant in a criminal case to prosecute a writ of error out of the Circuit Court of Appeals *in forma pauperis*, Jenkins, J., delivering the opinion, said:

"We do not think it can properly be said that a writ of error is a suit or action within the statute so far as respects a writ of error in a criminal case. Were it not for the words 'prosecute to conclusion,' we doubt if any court would hold that the act applied to an appeal or writ of error in a civil cause. The applicant by the statute must declare the nature of his cause of action. Surely an erroneous ruling by the trial court cannot be held to furnish 'a cause of action,' as that phrase is commonly understood. The suit, by that term, in our judgment, refers to a legal demand by one against another, not to the rulings of a trial court. Under a somewhat similar statute of the State of New York, its Supreme Court, speaking through Judge Cowen, held that the provisions of the statute did not extend to writs of error. *Moore* v. *Cooley*, 2 Hill, 412."

We adhere to the view that the act, on its face, does not apply to appellate proceedings, and that it does not is sustained by other considerations.

The act of July 20, 1892, does not purport to grant the right to prosecute a writ of error or an appeal, and that right depends on statute and not on the common law. *United States* v. *More*, 3 Cranch, 171. Errors can be reviewed only in the cases in which those processes are given by statute. *Ex parte Parks*, 93 U. S. 21.

Section 11 of the judiciary act of March 3, 1891, creating the Circuit Courts of Appeals, provides:

"And all provisions of law now in force regulating the methods and system of review, through appeals or writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect of the Circuit Courts of Appeals, including all provisions for bonds or other securities to be required and taken on such appeals and writs of error, and any judge of the Circuit Courts of Appeals, in respect of cases brought or to be brought to that court, shall have the same powers and duties as to the allowance of appeals or writs of error, and the conditions of such allowance, as now by law belong to the justices or judges in respect of the existing courts of the United States respectively."

There are several such provisions, and, among others, section 1000 of the Revised Statutes reads:

"Every justice or judge signing a citation on any writ of error shall, except in cases brought up by the United States or by direction of any department of the Government, take good and sufficient security that the plaintiff in error or the appellant shall prosecute his writ or appeal to effect, and, if he fails to make his plea good, shall answer all damages and costs, where the writ is a supersedeas and stays execution, or all costs only where it is not a supersedas as aforesaid."

Clearly an act giving the right to prosecute *in forma pauperis* cannot be extended by implication beyond its terms in conflict with existing provisions in relation to writs of error and appeals.

The result is that the first question must be answered in the negative.

2. The second question is, whether, if the act of July 20, 1892, does not apply to appellate proceedings, the Court of Appeals has "any authority to permit the prosecution of a writ of error *in forma pauperis*."

We answer that that court has no such power unless derived from statute, and we find no statute authorizing any order to that effect.

Costs are the creatures of statute, and it is settled that authority to permit prosecution *in forma pauperis* must be given by statute.

By section 2 of the judiciary act of March 3, 1891, the costs and fees in the Supreme Court are made the costs and fees in the Circuit Courts of Appeals, and the latter courts are empowered to establish all rules and regulations for the conduct of the business of the court.

And it appears that on November 21, 1898, Rule 16 of the Circuit Court of Appeals for the Sixth Circuit was so amended as to read that "at the time of filing the record the plaintiff in error or appellant shall deposit with the clerk the sum of thirty-five dollars as security for costs, except in cases in which the proper showing is made and an order of this court is entered thereon allowing the cause to proceed *in forma pauperis*."

But the exception must be assumed to have been framed on a construction of the act of July 20, 1892, which we have been constrained to hold it does not bear, and the exception falls in the absence of a statute authorizing such an order.

We need not advert to the distinction between costs and fees, but it should be noted that the power of the Circuit Courts of Appeals, in respect of the distribution of costs or in dealing with its officers in respect of their fees, under special circumstances, is not here involved.

Both questions answered in the negative.